

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 Pamela Pepper,

4  
5 Petitioner,

Case No. 06-2-0002

6 v.

**ORDER ON DISPOSITIVE MOTION**

7  
8 Jefferson County,

9 Respondent.

10  
11 **This Matter** comes before the Board upon the County's motion to dismiss the petition for  
12 review filed in this case. Dispositive Motion of Respondent Jefferson County, March 9,  
13 2006. Petitioner filed her response to the motion on March 20, 2006. Petitioner's Response  
14 to Jefferson County's Dispositive Motion. Having reviewed the arguments of counsel, the  
15 petition for review, and the files and records herein, the Board grants the County's  
16 dispositive motion.  
17

18  
19 **DECISION**

20 The petition for review was filed in this case on January 20, 2006. An amended petition was  
21 filed on February 21, 2006. In both the original petition and the amended petition, Ms.  
22 Pepper challenges the failure of the County to grant her request for a site-specific  
23 amendment of the comprehensive plan (MLA05-70) to revise the logical outer boundaries of  
24 the Four Corners LAMIRD (limited area of more intense rural development) to include her  
25 property.  
26

27  
28 The County's comprehensive plan was adopted in 1998. Ex. 16-4. The County completed  
29 its seven-year update of its comprehensive plan pursuant to RCW 36.70A.130 on  
30 December 13, 2004, with the adoption of Ordinance No. 17-1213-04. Ex. 16-7. Petitioner  
31 did not appeal the update.  
32

1   **Positions of the Parties**

2   The County argues that the Petitioner should have appealed the decision to exclude her  
3   property from the Four Corners LAMIRD when the boundaries of that LAMIRD were drawn  
4   in 1998. Dispositive Motion of Respondent Jefferson County at 6. The County points out  
5   that the designation of the Petitioner's property has not changed in seven years and that the  
6   petition for review is not timely.  
7

8  
9   The County further argues that the boundaries of the Jefferson County LAMIRDs are  
10   permanent and not subject to further expansion, particularly with the addition of  
11   undeveloped land. *Ibid* at 7.  
12

13   Petitioner responds that her challenge is based upon the 2004 update of the comprehensive  
14   plan. Petitioner's Response to Jefferson County's Dispositive Motion at 4. Although she did  
15   not timely file a challenge to the 2004 update, Petitioner argues that she did not receive  
16   notice of the update as required as notification to the public. *Ibid*. While she acknowledges  
17   that she was not entitled to individual notice of the update, Petitioner argues that the 2004  
18   update did not comply with the public participation requirements of RCW 36.70A.035 and  
19   the County's own public participation procedures. *Ibid* at 5-6.  
20  
21

22   Petitioner further argues that the Four Corners LAMIRD may be subject to minor  
23   adjustments. *Ibid* at 6. She asserts that her property, although vacant, is appropriate for  
24   development commensurate with other uses within the Four Corners LAMIRD since it has  
25   "essential services such as water and septic." *Ibid* at 7.  
26  
27

28   **Board Discussion**

29   The Growth Management Act (Ch. 36.70A RCW, GMA) requires petitioners to file their  
30   petitions challenging comprehensive plan policies and development regulations "within sixty  
31   days after publication by the legislative bodies of the county or city." RCW 36.70A.290(2).  
32

1 The Amended Petition for Review states specifically that the Petitioner “seeks review of  
2 Jefferson County’s Board of County Commissioners denial of her site-specific amendment  
3 to the Comprehensive Plan file number MLA05-70. Specifically, Petitioner requests an  
4 amendment to change her current zoning designation from RR 1:10 to Rural Commercial  
5 Neighborhood Crossroads.” Amended Petition for Review, 5.3. The Amended Petition  
6 further recites that the proposed comprehensive plan amendment was denied by the Board  
7 of County Commissioners in the annual comprehensive plan amendment cycle for 2005.  
8  
9 *Ibid* at 5.4.

10  
11 The Petitioner did not appeal the December 2004 update in this case. In the absence of  
12 such a challenge, she cannot now argue that the update is not valid for failure to comply  
13 with the public participation and notice provisions of the GMA. Had she included this issue  
14 in her petition for review, this issue would be before the Board. However, we cannot say  
15 that the result would be any different. Petitioner has made allegations regarding the failure  
16 of the County to follow the GMA and its own public participation procedures without  
17 providing any supporting evidence. The burden on the Petitioner to show that the County’s  
18 public participation procedures were so defective as to override the statutory requirement  
19 that petitions be brought within sixty days of the publication of the legislative enactment  
20 would be heavy indeed.  
21  
22

23  
24 Petitioner’s real quarrel is with the County’s decision not to rezone her property as  
25 requested in her proposed comprehensive plan amendment – MLA05-70. See Amended  
26 Petition for Review, 5.3. Petitioner alleges that the boundaries of the Four Corners  
27 LAMIRD are flawed and minor adjustments are permitted. Amended Petition for Review at  
28 1.2. However, she does not have a right to collaterally challenge the LAMIRD boundaries  
29 that were adopted in the 1998 comprehensive plan and updated in the 2004 update by  
30 bringing a proposal for a comprehensive plan amendment.  
31  
32

1 Although Petitioner may request a plan amendment, such a request does not reopen the  
2 underlying LAMIRD designation to challenge. The decision to grant such a request was  
3 within the discretion of the County Commissioners but there is no GMA mandate to grant it.  
4 Further, had the Commissioners granted the amendment, a challenge to that amendment  
5 could have been brought on the grounds recited by the County in its dispositive motion.  
6

7  
8 RCW 36.70A.070(5)(d) allows a county to designate limited areas of more intense rural  
9 development (LAMIRDs) under certain circumstances. The County has done that in prior  
10 enactments. Petitioner fails to cite to any requirement in the GMA that her proposed  
11 comprehensive plan amendment must be granted. Her petition therefore fails to state a  
12 claim that this Board could grant.  
13

#### 14 ORDER

15  
16 The Petition for Review as amended by the Amended Petition for Review fails to timely  
17 challenge the adoption of the Four Corners LAMIRD boundaries and fails to state a claim for  
18 relief that may be granted by the Board as to the MLA05-70 proposed comprehensive plan  
19 amendment. It is hereby DISMISSED.  
20

21  
22 Pursuant to RCW 36.70A.300 this is a final order of the Board.  
23

24 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date  
25 of mailing of this Order to file a petition for reconsideration. The original and three  
26 copies of a motion for reconsideration, together with any argument in support  
27 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the  
28 original and three copies of the motion for reconsideration directly to the Board, with  
29 a copy to all other parties of record. Filing means actual receipt of the document at  
30 the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing  
31 of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
32 review.

**Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
decision to superior court as provided by RCW 36.70A.300(5). Proceedings for

1 judicial review may be instituted by filing a petition in superior court according to the  
2 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
3 Enforcement. The petition for judicial review of this Order shall be filed with the  
4 appropriate court and served on the Board, the Office of the Attorney General, and all  
5 parties within thirty days after service of the final order, as provided in RCW  
6 34.05.542. Service on the Board may be accomplished in person or by mail, but  
7 service on the Board means actual receipt of the document at the Board office within  
8 thirty days after service of the final order. A petition for judicial review may not be  
9 served on the Board by fax or by electronic mail.

10 **Service.** This Order was served on you the day it was deposited in the United States  
11 mail. RCW 34.05.010(19)

12 Entered this 24th day of March 2006.

13  
14 \_\_\_\_\_  
Margery Hite, Board Member

15  
16 \_\_\_\_\_  
Holly Gadbow, Board Member

17  
18 \_\_\_\_\_  
Gayle Rothrock, Board Member